

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-130164-09

Date: DECEMBER 15, 2009

RE:

Legend

Decedent	=
Son	=
Accountant	=
Date 1	=
Date 2	=
Date 3	=

Dear :

This responds to the May 28, 2009 letter from your authorized representative and other correspondence requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

Decedent died on Date 1. Decedent's son (Son) served as the executor of Decedent's estate. Son filed Decedent's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) on Date 2. Son hired Accountant to prepare the return. The return was prepared without full consideration of the alternate valuation election under § 2032. Accountant then prepared the return taking into account the alternate valuation election and, on Date 3, Son filed supplemental information on a Form 706 making that election. Date 3 is less than one year after the time prescribed by law (including extensions) for filing the estate tax return.

LAW AND ANALYSIS

Section 2032(a) provides, in part, that the value of the gross estate may be

determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

- (1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.
- (2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

Section 2032(c) provides that no election may be made under § 2032 with respect to an estate unless the election will decrease: (1) the value of the gross estate; and (2) the sum of the federal estate tax and the generation-skipping transfer tax imposed on the estate with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

Section 2032(d)(1) provides that an election under § 2032 shall be made by the executor on the return of tax imposed by § 2001. Under § 2032(d)(2), no election may be made under § 2032 if the return is filed more than 1 year after the time prescribed by law (including extensions) for filing the return.

Section 20.2032-1(b)(3) of the Estate Tax Regulations provides that a request for an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 will not be granted unless the estate tax return is filed no later than 1 year after the due date of the return (including extensions actually granted).

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer

provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. In addition, the estate tax return was filed no later than 1 year after the due date of the return (including extensions actually granted). Consequently, Son is granted an extension of time to Date 3 for making the alternate valuation election under § 2032. A copy of this letter should be forwarded to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
Passthroughs & Special Industries

Enclosures

Copy for § 6110 purposes
Copy of this letter